

1 GEORGE J. TICHY II, Bar No. 041146
MICHAEL F. MCCABE, Bar No. 111151
2 MICHELLE R. BARRETT, Bar No. 197280
KIMBERLY L. OWENS, Bar No. 233185
3 LITTLER MENDELSON
A Professional Corporation
4 650 California Street, 20th Floor
San Francisco, California 94108
5 Telephone: (415) 433-1940
Facsimile: (415) 399-8490
6 E-mail: gtichy@littler.com, mmccabe@littler.com,
mbarrett@littler.com, kowens@littler.com
7

8 Attorneys for Defendants

9 HSBC MORTGAGE CORPORATION (USA) and
HSBC BANK USA, N.A.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
14 others similarly situated, and on behalf of
the general public,
15

16 Plaintiffs,

17 v.

18 HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
19 through 50, inclusive,

20 Defendant.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF REBECCA SLAPO IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION FED. R.
CIV. P. 23**

Date: October 10, 2008
Time: 9:00 A.M.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

21
22 I, Rebecca Slapo, hereby declare and state:

23 1. I am over the age of 18, and I have personal knowledge of the facts listed
24 below. If called as a witness, I would testify to the following.

25 2. I work for HSBC Mortgage Corporation USA ("HMCU") as a Retail
26 Mortgage Lending Consultant, also commonly referred to as a "loan officer." I have worked for
27 HMCU as a "loan officer" from 1998 to the present. I am assigned to the Loan Production Office
28 ("LPO") located at 534 Broadhollow Road, Melville, New York 11747. I am also assigned to work

1 as a consultant with two HSBC Bank USA, N.A. ("HBUS") branch locations in Cedarhurst and
2 Great Neck, New York. Prior to working with the Cedarhurst branch, I was assigned to work as a
3 consultant with the Garden City branch.

4 3. As a loan officer, I consider myself a "dream maker" in that I make home
5 buying possible for my clients. As a loan officer, I provide customer service to the customers with
6 whom I work. As a part of my duties, I educate the customer on how to qualify for a loan. I am
7 responsible for not only originating mortgage loans, but also bringing these loans to closing,
8 servicing the HMCU's customers related to these mortgage products. I have always taken the
9 position that I am, in essence, self-employed and what I do as a loan officer is represent the HMCU
10 brand of loan products.

11 4. Referrals from prior satisfied clients are the major source of my business and
12 are responsible for approximately 66% of my book of business. To generate this business and
13 potential customers, I rely on an extensive source of referrals from previous clients as well as
14 referral relationships that I have built up over the years generally with attorneys and real estate
15 brokers, CPAs and financial advisors. It is not unusual that my prior clients come to me for their
16 second home purchases, as well as referring their children as first-time home buyers. I also perform
17 a variety of outreach marketing activities and am involved in the Long Island Board of Realtors
18 ("LIBOR"), as well as the Great Neck Chamber of Commerce.

19 5. Another source of my business comes from the HBUS bank branches that I
20 service. These branch sources represent approximately 33% of my business. I generally work one-
21 half day at each of my assigned branches, as well as being assigned "floor time" in the Melville LPO
22 twice per month. I routinely go out into the marketplace to wherever potential customers are.
23 Generally, other than being assigned "floor duty" one to two times per month and approximately a
24 total of one day per week at my assigned branches, I spend the majority of the remaining time on the
25 road and networking with potential new business sources.

26 6. I meet with clients in various locations and there is generally no set meeting
27 place for my clients. The decision about where and when to meet clients is strictly for client
28 convenience since, as loan officers, we are primarily concerned with completely satisfied customer

1 service. As part of that customer service, I also attend every one of my closings. I view the
2 education of my potential clients, as well as education of the existing ones, as an essential ingredient
3 of my job. If I properly educate the consumer on how to qualify for a loan, I am successful in
4 closing the loan.

5 7. I also work with referring Real Estate agents at "Open House" events. In that
6 case, I am present at the house being sold and approach potential buyers by describing the HMCU
7 mortgage products. This helps to develop a personal relationship. I also conduct "1st Time Home
8 Buyer" events to attract new business.

9 8. I have significant freedom to engage in activities that best help me identify
10 and develop customers, as well as to meet my sales goals. HMCU does not insist I do anything to
11 develop sales, nor does it regulate my time spent on the job in any way. There is very little
12 managerial control over my activities. However, as a loan officer, I am expected to be an
13 entrepreneur. My manager's expectation is that I will be involved in as many different groups as
14 possible. Therefore, I am expected to make business connections from groups such as LIBOR and
15 the Chamber of Commerce.

16 9. Kathleen Lamb is my manager. In my experience, there is absolutely no
17 employer-wide or other set policy that tells all loan officers how to do their jobs, when to do their
18 jobs, or how to spend their time. I have general freedom from any supervision or micro-
19 management. In essence, no one is looking over my shoulder and watching everything I do. Except
20 for attending a once per month meeting and maintaining a relationship with my bank branches, no
21 one regulates how I spend my time. If my manager or I need to contact each other, we will call each
22 other or e-mail from the road or various other locations.

23 10. HMCU provides a great deal of training for its employees in a variety of areas
24 and products, which can generally be done online. HMCU makes certain trainings mandatory, so
25 that loan officers can learn the new guidelines or regulations necessary to do our jobs.

26 11. To my knowledge and based upon my experience at HMCU, no policies
27 and/or procedures exist regarding how I go about conducting my sales activities. Specifically,
28 except for attending a monthly meeting and servicing my two assigned branches, no one regulates

1 how I spend my time. I do not feel as if I am directly supervised and clearly no one is “over my
2 shoulder” watching or directing me.

3 12. Another part of my job is to be an educator. In order to make peoples’ dreams
4 come true, I need to educate them on the best ways to become eligible for loans and what products
5 will be best for them given their financial stability and their level of comfort with different types of
6 loans that may pose more or less risk.

7 13. I remain personally involved and engaged in the entire loan process from
8 inception up to and including closing. Customer Service is the #1 priority and the process typically
9 involves the following: (i) identify the loan product for the customer; (ii) begin processing the loan
10 by meeting with the customer to input information and writing down information and inputting later;
11 (iii) utilize the Loan Quest program to input customer data to begin processing the loan; (iv) remain
12 in close contact with the underwriter for the loan to ensure that the loan is delivered to the customer;
13 (v) attend the “closing” on the house; and (vi) stay connected with the customer to make sure they
14 are satisfied as well to prospect for other client referrals.

15 14. As a loan officer, I have the freedom to choose where and when I work. I
16 solicit business everywhere I go from my grandmother’s birthday party, to the check out line at the
17 supermarket, to the cleaners to picking up laundry. Typically, I work five days a week. Since my
18 family and I observe the Sabbath, I rarely work on weekends. While this schedule is typical, the
19 location and times I may work changes depending on what loans I have in the pipeline and my
20 customers’ needs.

21 15. I cannot say that I generally work from any fixed location. I have to be
22 flexible about location. I often take attorneys and other individuals who may provide referrals to
23 lunch, and I always attend my customers’ closings. I also conduct seminars or attend events where
24 HMCU may be a sponsor.

25 16. Nobody has ever told me that I cannot take a break nor do I expect to receive
26 set breaks. I do not expect to receive set breaks because I control my schedule. I can take time off
27 when I wish to take time off and I can decide how much and how long to work each day.
28

1 17. Additionally, while my computer access is home-based, I have access to my
2 business anytime and anywhere via my Blackberry and laptop. It is because of these electronic
3 devices that I can do my job anywhere the client takes me. The other electronic equipment I use for
4 my job is typically a phone, fax, copy machine, etc. I have these at home or use the branch's
5 equipment if I am in the area and if it is convenient.

6 18. As a loan officer, I am paid by a draw and incentive compensation, which is
7 also commonly called "commissions." Since 2001, I have earned \$100,000 or more each year.

8 19. The job of a loan officer is like owning my own business. Essentially the
9 more I work, the more I earn and, for me, "the sky's the limit." Even though HMCU is my
10 employer, I feel as if I am self-employed.

11 20. HMCU also pays me \$360 for mileage every month and pays for everything
12 lending consultants need to do business, including, but not limited to, business cards, fax paper and
13 laptop computers. In addition, HMCU pays for my marketing mailings and materials. Lending
14 consultants do not have to purchase anything for work.

15 21. HMCU has a requirement that customer application fees should not be waived
16 and that I should collect the fee of \$325.00 at the time I take the loan and begin the process. In
17 reality, I hardly ever collect this fee and often times "forget." If I do not take the fee and the loan
18 does not close, my incentive commission will be reduced by the amount of the application fee that I
19 should have collected. While I do not like this policy, I believe it is my choice if I do not take the
20 fee. If the loan closes, the customer eventually pays the fee at closing. I view my choice to "forget"
21 to take the application fee as the price of doing business to keep my clients happy, remain
22 competitive, close the loan, build the business and make more money.

23 22. I have a great deal of flexibility with respect to determining when, where and
24 how I perform my job duties. While I sometimes work long hours, I need this flexibility to
25 successfully perform my sales activities. For example, I must sometimes meet with customers on
26 nights or weekends. I do not believe that the loan officer job is a job that can have set hours or
27 schedules. I do not believe that loan officers should be punching a time clock. You cannot do this
28

1 job in that way. My success with HMCU shows that my own independent judgment and way of
2 doing business is a key to doing this job well.

3 I declare under penalty of perjury under the laws of the State of New York and the
4 United States of America that the foregoing declaration is true and correct to the best of my personal
5 knowledge. Executed this 17 day of September 2008 in Melville, New York.

6
7
8 
9 REBECCA SLAPO
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28